October 17, 2022

Via Email to nasaacomments@nasaa.org
North American Securities Administrators Association (NASAA)
750 First Street, NE, Suite 1140
Washington, DC 20002

Re: NASAA Corporation Finance Section's Proposed Revisions to NASAA Statement of Policy Regarding Real Estate Investment Trusts

Dear Ms. Seidt and Mr. Heuerman:

AARP, on behalf of our nearly 38 million members and all older Americans nationwide, appreciates the opportunity to provide comments on the NASAA Corporation Finance Section's ("Section") Proposed Revisions ("Proposed Revisions" or "Proposal") to the existing NASAA Statement of Policy Regarding Real Estate Investment Trusts ("Statement of Policy").[1]

As a preliminary matter, AARP appreciates the vital role of state securities regulators in providing oversight of the offering and sale of non-traded Real Estate Investment Trusts ("REITs") and welcomes the opportunity to share our perspective. AARP has a keen interest in the Proposal because the primary victim in suitability and fraud cases with these products are older Americans. We support initiatives by securities regulators to modernize the framework for oversight of REITs, and specifically, to elevate protections afforded to retail investors.

As NASAA, the SEC, and FINRA have documented, non-traded REITs can be among the most risky investment products for retail investors.[2] They often entail extraordinarily high fees, and because they are not traded, are prone to illiquidity.[3] Further, because such REITs don't trade on

[1] https://www.nasaa.org/wp-content/uploads/2011/07/g-REITS.pdf.

[2] In FINRA's dispute resolution statistical report, Top 15 Security Types in Customer Arbitrations, REITS consistently rank at or near the top of the list. In fact, in 2021, the most recent year for which data is available, REITS were second on the list – surpassed only by common stock, whose issues outnumber REIT issuers by the thousands. In 2020, REITS were number one on the list - outnumbering all other products. The fact that FINRA has reported 1,468 cases involving REITs since 2017 suggests this data is not an anomaly. (https://www.finra.org/arbitration-mediation/dispute-resolution-statistics/2021)

[3] As FINRA reminded investors as recently as August 2022, "All REITs come with fees and expenses, as well as risks, including the risk that your investment could lose some or all of its value…[And] REIT fraud is real. Sales tactics might include using false information, overpromising returns and underplaying risks, and promoting REIT-like products that are, in fact, not REITs and have less liquidity and additional areas of risk. Carefully read all supporting material, and consider seeking input from an investment professional before making this type of investment." (https://www.finra.org/investors/insights/reits-alternatives-to-ownership)

exchanges, they do not benefit from the real-time price transparency associated with many traditional investments, and hence are difficult to value accurately and fairly. Changes to interest rates, property values and the economy may also affect the returns of REIT investments.[4]

AARP has a keen interest in the Proposal as REITs are heavily marketed to older investors. [5] Indeed, the primary victim in suitability and fraud cases with these products are older Americans, many of whom are AARP members.

1. **AARP supports the Section's proposal to update the standards of conduct applicable to brokers selling non-traded REITs to reflect a "best interest" duty of care.**

The Proposed Revisions would amend the Statement of Policy by "formally incorporating into the guidelines th[e] new [Reg. BI] conduct standard."[6] They also incorporate "any other updated conduct standards that are adopted by [States] as applied to brokers recommending securities."[7] Fundamentally, AARP continues to believe that investors receiving investment advice should get a standard of care that is solely in their best interest when transacting with financial professionals, including but not limited to brokers selling REITs.[8] In our view, financial professionals that serve retail investors should have an obligation to act in the best interest of the investors and consumers they are serving – that is, to put the client's best interest first and ahead of their own.[9] AARP's members and the public have generally demanded and supported such protections, in the form of a fiduciary standard.[10] Indeed, AARP has long advocated for the imposition of a fiduciary standard to brokers providing personalized investment advice to retail customers, including in 2009 joining a coalition of organizations in advocating for reforms envisioned by Section 913 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

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[4] FINRA. Real Estate Investment Trusts: Alternatives to Ownership
(August 02, 2022) https://www.finra.org/investors/insights/reits-alternatives-to-ownership

[5] Eleanor Laise, Retirees, Don't Get Stranded Hunting Returns: Some Older Investors Are Turning to Unregistered Securities and Other Alternative Investment Risks. Kiplinger (Dec. 13, 2019), https://www.kiplinger.com/article/retirement/t037-c000-s004-retirees-don-t-get-stranded-hunting-returns.html

[6] Proposed Revisions, P. 2.

[7] The Proposed Revisions would "add and broadly define 'Conduct Standard' to include current standards and those that may be adopted by other jurisdictions…specifically identified standards under "federal or state law," "Regulation Best Interest," "ERISA," or "Internal Revenue Code." (New definitional section I.B.8)

[8] As AARP Georgia State President Lee Baker testified to Congress in 2019, "All financial professionals should act in the best interest of the savers they are serving -- they should put the client's best interest first and ahead of their own. AARP members and the public have generally demanded and supported the protections of a fiduciary standard. In survey after survey, we have found that retirement savers overwhelmingly want advice that is in their best financial interest". https://press.aarp.org/2019-3-14-Baker-Testimonial-Congress

[9] Ibid. https://press.aarp.org/2019-3-14-Baker-Testimonial-Congress

[10] In survey after survey, AARP has found that retirement savers overwhelmingly want advice that is in their best financial interest. In a 2018 poll, almost 70 percent of respondents agreed that the government should establish a rule that would require financial professionals to give advice that is in the best interest of the account holders when giving advice about retirement accounts. https://press.aarp.org/2019-3-14-Baker-Testimonial-Congress

At the same time, AARP appreciates steps to strengthen those protections that do exist with respect to retail investors purchasing REITs, and in this regard, the incorporation of the "best interest" standard reflected in the Proposed Revisions moves the ball forward. AARP agrees that NASAA's present Statement of Policy is "outdated" insofar as it relies upon a "suitability" standard to govern the standard of conduct, and agrees that the incorporation of references to Reg. BI, along with other state and federal requirements, will enhance retail investor protections surrounding the offer and sale of REITs. We urge the Section to adopt the updates.

2. **AARP supports the Section's proposal to update the net income and net worth figures in the suitability section of the prospectus by adjusting such figures upward for inflation.**

Currently, NASAA's Statement of Policy requires that purchasers of REIT securities have either a combination of a minimum net income of $70,000 and net worth in excess of $70,000, or a minimum net worth of $250,000.[11] The Proposed Revisions would update these net income and net worth figures to account for the effect of inflation since the Statement of Policy was adopted, in 2007. Specifically, the Proposed Revisions would require an investor have either the combination of a minimum annual gross income of $95,000 and a net worth in excess of $95,000, or a minimum net worth of $340,000, to purchase a REIT security.

AARP supports the Proposed Revisions applicable to the income and net-worth standards in the Statement of Policy. Such updates are reasonable and necessary; in essence, they simply reinstitute the level of protection that was afforded by the thresholds at the time of their adoption in 2007. We also strongly encourage the Section to consider including provisions in the updated Statement of Policy to automatically adjust both standards for inflation going-forward.

3. **AARP supports the Section's proposal to add a new prohibition against using gross offering proceeds as an investment objective or strategy to make distributions.**

The Proposed Revisions contemplate revising three subsections of the Statement of Policy to prohibit REIT sponsors from reserving the right to use investor proceeds from an offering to fund regular cash distributions.

In explaining the basis for the revision, the Proposal notes that the practice "has been consistently criticized by regulators as having the potential to confuse and mislead retail investors as described above," and states that NASAA is itself "concerned about confusing and deceptive practice[s]" used by certain REIT sponsors with respect to such distributions.[12]

State securities regulators are on the front lines of protection for older investors in every state, territory and community. As such, to the extent the NASAA member regulators are concerned that certain regular distributions tend to encourage unfair or deceptive practices on the part of sponsors, AARP wholly supports revisions to address such concerns.

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[11] https://www.nasaa.org/wp-content/uploads/2011/07/g-REITS.pdf.
[12] Proposed Revisions, P. 9

Thank you again for the opportunity to share AARP's perspective on the importance of investor protections as it relates to REITs and similar investment products. If you have any questions, please feel free to contact Sarah Mysiewicz of our Government Affairs office at SMysiewicz@aarp.org or 202-893-4462.

Sincerely,

David Certner

David Certner
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Government Affairs